

EXHIBIT 53

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: *
*
RS FIT NW LLC, * Chapter 11
Debtors. *
* Case No.: 20-11558 (KBO)
*
24 HOUR FITNESS * (Jointly Administered)
WORLDWIDE, INC., *
Plaintiff, *
*
VS. * Adv. Proc. No. 20-51051 (KBO)
*
CONTINENTAL CASUALTY *
COMPANY, ET AL., *
Defendants. *

ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION OF
STARR SURPLUS LINES INSURANCE COMPANY
THROUGH DOLORES RAMIREZ VARELA

VOLUME 1

OCTOBER 4, 2022

(Reported Remotely)

1 ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION of STARR
2 SURPLUS LINES INSURANCE COMPANY through DOLORES RAMIREZ
3 VARELA, produced as a witness at the instance of the
4 Plaintiff, and remotely duly sworn, was taken in the
5 above-styled and numbered cause on October 4, 2022, from
6 11:04 a.m. to 4:47 p.m., before Carol Jenkins, CSR, RPR,
7 CRR, in and for the State of Texas, reported by machine
8 shorthand, with the Witness in Houston, Texas, pursuant
9 to the Federal Rules of Civil Procedure, the Emergency
10 Order Regarding the COVID-19 State of Disaster, and the
11 provisions stated on the record or attached hereto.

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8
9 ALSO PRESENT:

10 The Videographer, Ms. Jessica Rawls

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1 THE VIDEOGRAPHER: Good morning. Today is
2 October 4th, 2022. The time is 11:04 a.m., and we are
3 now on the record.

4 Madam Court Reporter, would you please
5 swear in the witness.

6 THE REPORTER: Good morning. My name is
7 Carol Jenkins reporting this remotely from Chambers
8 County, Texas, and the witness is located in Houston,
9 Texas.

10 DOLORES RAMIREZ VARELA,
11 having been first remotely duly sworn, testified as
12 follows:

13 EXAMINATION

14 BY MS. BOWMAN:

15 Q. Good morning. My name is --

16 A. Good morning.

17 Q. -- Elizabeth Bowman. I'm representing 24 Hour
18 Fitness.

19 Would you please state your full name for
20 the record?

21 A. Dolores Ramirez Varela.

22 Q. Dolores Ramirez Varela.

23 A. Right.

24 Q. Do you mind if I call you Ms. Varela?

25 A. That's fine.

1 Q. "And." Okay. But let's --

2 A. There's the "and." You can't just look at one.
3 You gotta look at the whole paragraph.

4 You can't hypothetically say, oh, well, it
5 had this; but, no, you have to meet that whole paragraph
6 requirement.

7 Q. Yes.

8 A. Which is three parts.

9 Q. Absolutely. So --

10 A. Okay.

11 Q. -- we've got the -- the multipart paragraph,
12 but you need to -- you need to meet each one separately,
13 correct, and then together meet all of them; is that
14 correct?

15 A. Yes, all of them.

16 Q. So let's just talk about this one right now.
17 Due to the actual presence and spread of a -- of
18 communicable diseases, what is the actual presence and
19 spread of communicable diseases? What does that mean?

20 A. That they can prove that the disease was on the
21 location.

22 Q. And how would they do that?

23 A. Or at the location. I'm sorry.

24 Q. And how -- how would a policyholder do that?

25 A. Many forms. I could say -- I could not say,

1 hypothetically speaking, was that person that tested
2 positive for COVID actually at the facility at the day
3 they tested COVID? Were they wearing their mask, were
4 they not wearing their mask, hypothetically speaking.

5 Q. So if you were to get a COVID claim right now,
6 what are the questions you would ask to determine if
7 they're --

8 A. Well, to clarify, I would not get a COVID claim
9 right now.

10 Q. Why is that?

11 A. Because the majority of the policy -- this is a
12 property policy.

13 Q. Uh-huh.

14 A. We have exclusion on there.

15 Q. Okay. But a COVID claim where there's an
16 endorsement for a communicable disease.

17 A. Okay.

18 Q. I'm saying if you -- you get a similar to 24
19 Hour Fitness, when that policy crosses your desk or when
20 that claim crosses your desk, what are the --

21 A. Hypothetically speaking.

22 Q. Hypothetically speaking, what are the questions
23 you are asking to determine if there's the presence and
24 spread of communicable diseases?

25 A. Well, if it had this particular endorsement,

1 A. CDC guidelines.

2 Q. So what about for the time while -- while
3 COVID-19 is present, the microorganism is present for
4 those few days right after access has been prohibited,
5 how would the insurer -- or sorry, how would the insured
6 show the insurer that there was the actual presence and
7 spread? What would -- what would the policyholder need
8 to show you?

9 A. Okay. On that note, I'm not --

10 Q. Uh-huh.

11 A. -- putting to the side the wording here is
12 spread of communicable disease.

13 Q. Yes.

14 A. Okay. It doesn't say COVID, okay? There are
15 communicable diseases that can be tested for the actual
16 presence.

17 Q. So are you saying that a virus that spreads
18 from person to person cannot be a communicable disease
19 under this policy?

20 MS. MURPHY: Objection.

21 A. Yes, but this policy and this endorsement is
22 directed to a communicable disease that can actually be
23 tested due to the actual presence and spread.

24 Q. (By Ms. Bowman) So you're saying there's no
25 way since COVID --

1 A. I'm not saying there's no way. You're putting
2 words in my mouth.

3 Q. Well, I'm just understanding when COVID -- when
4 a policyholder could show the actual presence and spread
5 of COVID-19 under this endorsement.

6 A. That's the insured's burden of proof to prove
7 that. So they have to present that proof.

8 Q. And what would they have to present? What
9 would the proof look like?

10 A. The insured would have to investigate and prove
11 that there was presence of COVID.

12 Q. Yes. But so we understand that there is the
13 responsibility --

14 A. And in order to get to A --

15 Q. Uh-huh.

16 A. -- like I said, access needed to be prohibited.
17 So I, hypothetically speaking, if we're doing this
18 hypothetically, it would be a test proving that that
19 disease was on the premises. Hypothetically speaking,
20 there's a test out there that proves that COVID is on
21 the premises.

22 Q. Are you aware of from March 2020 any tests that
23 would show COVID-19 in a location as opposed to in a
24 person?

25 A. Are we still speaking hypothetically?

1 answered completely at this time?

2 A. Well, there were several. Let's start with
3 this 10 since it's on the screen.

4 Q. Uh-huh.

5 A. Our loss is ongoing, but we will provide
6 estimates as soon as practical. Okay. For the -- we
7 never received estimates. Move forward up.

8 And here it says: We are still
9 investigating this item. We'll respond after our
10 investigation is complete. Keep going down.

11 Q. Down?

12 A. Scroll up, scroll up, sorry.

13 Q. Okay.

14 A. Quite a few. Keep going. Right here. Any
15 costs that were incurred, we didn't receive any special
16 cleaning. I mean, we didn't receive anything from the
17 insured on that note.

18 Q. So --

19 A. They were just answered. Questions were
20 answered, that is correct. But they were still going to
21 have to provide some form of additional information.

22 Q. And did anybody relay that?

23 A. Well, they were still -- it was ongoing. The
24 insured itself -- the insured and the responses
25 themselves said they were still investigating, and it

1 was ongoing.

2 Q. And so did anybody ever follow up with 24 Hour
3 Fitness regarding the --

4 A. We were still in investigation. So at this
5 point, we were giving them time.

6 Q. And at what point would you -- at what point
7 were you or Mike Allen planning on following up on any
8 of these questions?

9 A. We were still investigating. We didn't have a
10 time frame of when we were going to do that yet.

11 Q. Okay. And the specific questions that you
12 pointed out that hadn't been answered, say, No. 10 or, I
13 guess, what was the --

14 A. There was quite a few --

15 Q. Okay.

16 A. -- that we could pick and choose. There were
17 quite a few.

18 Q. So, okay, No. 8: Has ingress or egress to any
19 of the clubs been physically prevented fully or
20 partially? If so, please provide an explanation as to
21 how and why.

22 We're still investigating this item and
23 will respond after our investigation is complete.

24 A. Yes, we were still waiting responses for
25 information.

1 weren't in a position, so we needed more information.
2 Hence why we revised a reservation of rights letter and
3 sent it to the insured requesting more inquiries, which
4 the insured was open to answering per their statement.

5 Q. Okay. So let's then go to the additional ROR.

6 Or actually, first, let's go to an email
7 from the market or with the market.

8 MS. BOWMAN: So for the court reporter,
9 this was marked Exhibit Q for the market call.

10 (Exhibit Q marked.)

11 Q. (By Ms. Bowman) Okay. Can you see my screen?

12 A. Yes, I can.

13 Q. And can you see that there is an email from
14 Odell Bradley on March 25th, 2020?

15 A. Yes, I can see that.

16 Q. And can you see that you were a recipient of
17 this email?

18 A. Correct.

19 Q. Okay. Let's go ahead and read this paragraph.

20 There seems to be a good chance business
21 interruption coverage will be triggered. I think we all
22 agree.

23 Do you agree with Mr. Bradley's assertion
24 here?

25 A. No, I did not agree, but that was his email to

1 the market, not mine.

2 Q. And did you ever express that you did not
3 agree?

4 A. I didn't respond, no.

5 Q. Why?

6 A. Because I did not agree. Why was I going to
7 respond?

8 Q. So your response --

9 A. And it -- and it said market thoughts at the
10 end.

11 Q. And you are a part of the market, correct?

12 A. Correct. But that doesn't mean I need to
13 respond.

14 Q. So let's think back to earlier when you revised
15 the ROR, the first one, you posed questions for the
16 initial RFI.

17 A. Uh-huh.

18 Q. Correct?

19 A. (Nods head affirmatively.)

20 Q. You participated in email exchanges with the
21 market in the past, correct?

22 A. On some occasions, correct.

23 Q. But in this situation when Mr. Bradley made the
24 assertion that the whole market agrees that business
25 interruption coverage will be triggered, you did not

1 feel the need to respond to that?

2 A. No, I did not.

3 MS. MURPHY: Objection.

4 Go ahead.

5 Q. (By Ms. Bowman) Were you worried at any point
6 that you and the market were interpreting the policy
7 language differently then?

8 A. No. The only thing that I want to say, if I
9 can recall correctly, the -- this email triggered a
10 market call, and I think that's when we retained
11 counsel. Can I see the date of the email?

12 Q. Yeah.

13 A. Yes, that's --

14 Q. Okay. So you remember the market call?

15 A. I remember the market call.

16 Q. And did you participate in the market call?

17 A. I participated.

18 Q. How so?

19 A. I called in.

20 Q. And did -- do you remember what was discussed
21 on the market call?

22 A. Outside counsel was suggested.

23 Q. At this point, do you recall, had you retained
24 the outside counsel?

25 A. No, I had not.

1 this is the seventh report.

2 A. Okay. Okay.

3 Q. And so I just want to ask about this last
4 little bit that Mr. Gottlieb from 24 Hour Fitness said:
5 We look forward to receiving a preliminary indication as
6 to the insurer's coverage position.

7 At this time, you did not provide a
8 preliminary indication as to your position, correct?

9 A. No. At this time, he was requesting one.

10 Q. Okay. And at this time, you still needed
11 information to provide any sort of indication as to
12 what, how coverage would fall?

13 A. We needed documentation.

14 Q. Okay.

15 A. Going back to your "what proof," I don't know
16 what -- where the list of people, some of those
17 individuals didn't list what day or what location or
18 when they were at the facility.

19 Q. Okay. And at this time, you did not or Mike
20 Allen did not explain that that was some of the
21 information you were waiting for to --

22 A. Or at this -- at this time, we were waiting for
23 the insured to provide that, because in one of their
24 responses, they said they were going to be providing
25 that.

1 thorough investigation.

2 Q. Is there anything else that you can think of
3 other than what you just listed just for part A?

4 A. If the individual wanted to give us, you know,
5 any other documentation showing. But we could say that
6 with that information, there was actual presence. The
7 insured, you know, cleaned up that same day, if we had
8 costs of cleanup that same day. But to get to A, the
9 insured would have had an order to prohibit access to
10 their location.

11 Q. Okay.

12 A. Okay.

13 Q. So for the presence and spread, we need a
14 positive test, we need some -- someone with the positive
15 test in the club, we need to know if they were wearing a
16 mask, we need to know the places they went to before or
17 after they tested positive. Anything else?

18 MS. MURPHY: Objection.

19 Go ahead.

20 A. At the time, that's it.

21 Q. (By Ms. Bowman) Okay.

22 A. But without that information and not having an
23 order prohibiting access to the insured's location and
24 as a direct result of the declaration, like I said, we
25 needed the three parts in order to trigger coverage.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	*	
	*	
RS FIT NW LLC,	*	Chapter 11
Debtors.	*	
	*	Case No.: 20-11558 (KBO)
	*	
24 HOUR FITNESS	*	(Jointly Administered)
WORLDWIDE, INC.,	*	
Plaintiff,	*	
	*	
VS.	*	Adv. Proc. No. 20-51051 (KBO)
	*	
CONTINENTAL CASUALTY	*	
COMPANY, ET AL.,	*	
Defendants.	*	

REPORTER'S CERTIFICATE

DEPOSITION OF DOLORES RAMIREZ VARELA

OCTOBER 4, 2022

I, CAROL JENKINS, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
that this transcript is a true record of the testimony
given by the witness named herein, after said witness
was duly sworn by me.

I further certify that the deposition
transcript was submitted on _____,
_____ to the witness or to the attorney for the
witness for examination, signature, and return to me by
_____, _____.

I further certify the amount of time used

NELL McCALLUM & ASSOCIATES, INC.

**Exhibit 53 to Plaintiff's Appendix of Evidence
in support of Plaintiff's Motion for Partial Summary Judgment**

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1 by each party at the deposition is as follows:

2 Ms. Elizabeth Bowman - (04h03m)

3 Mr. Matt Denn - (00h00m)

4 Ms. Courtney Murphy - (00h16m)

5 Mr. Austin Westergom - (00h00m)

6 Ms. Marlie McDonnell - (00h00m)

7 Mr. Joel L. McNabney - (00h00m)

8 I further certify that I am neither
9 attorney nor counsel for, related to, nor employed by
10 any of the parties to the action in which this testimony
11 was taken. Further, I am not a relative or employee of
12 any attorney of record in this cause, nor do I have a
13 financial interest in the action.

14 SUBSCRIBED AND SWORN TO by the undersigned
15 on this the 11th day of October, 2022.

16 

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